

DRAFT FOR DISCUSSION PURPOSES ONLY
DATED: SEPTEMBER 27, 2022

MEMORANDUM OF UNDERSTANDING

This Agreement made the [____] day of [____], 2022 by and among the New York State Office of Children and Family Services (“OCFS”), acting by and through [Name], [Title], acting on behalf of the Commissioner of Office of Children and Family Services (the “Commissioner”) with offices at Capital View Office Park, 52 Washington Street, Rensselaer, New York 12144-2834, the Comptroller of the State of New York (the “Comptroller”), with offices at 110 State Street, Albany, New York 12236, County of Albany, New York (the “County”), with offices at Harold L. Joyce Albany County Office Building, 112 State Street, Albany, New York 12207, and the Dormitory Authority of the State of New York (the “Authority”), a statutory public benefit corporation having offices at 515 Broadway, Albany, New York 12207, collectively referred to herein as the “Parties”,

WITNESSETH:

WHEREAS, pursuant to section 1680 of the Public Authorities Law, the Authority is authorized to finance and refinance all or a portion of the cost of detention facilities certified by OCFS or by OCFS in conjunction with the state commission of correction for local probation departments as defined by Sections 255 and 256 of the Executive Law; and

WHEREAS, the Authority intends to issue its Raise the Age Revenue Bond Financing Program Revenue Bonds, Series 2022A (the “Bonds”) to obtain funds to finance or refinance all or a portion of the cost of a certain detention facility certified by OCFS or by OCFS in conjunction with the state commission of correction for the County; and

WHEREAS, the Authority and the County have entered into a Financing Agreement, dated as of [_____], 2022, pursuant to which the County, among other things, has agreed as follows: (i) to accept a Financing (as defined in the Financing Agreement) from the Authority and to repay such Financing according to the terms thereof; (ii) to pay to the Authority certain other amounts as required by the Financing Agreement; (iii) to pledge and assign to the Authority a sufficient portion of any and all public funds to be apportioned or otherwise to be made payable by OCFS (“OCFS Funds”) to the County to cover any amounts due to the Authority under the Financing Agreement; and (iv) that, upon the failure of the County to pay amounts due under the Financing Agreement, the payment of such OCFS Funds shall be made directly to the trustee for the holders of Bonds (the “Bond Trustee”); and

WHEREAS, Public Authorities Law §1680(2)(1)(2) expressly authorizes the County to irrevocably pledge and assign to the Authority a sufficient portion of any and all public funds to be apportioned or otherwise to be made payable by the State to the County to cover any amounts due to the Authority under the Financing Agreement and authorizes all State officials to apportion and pay to the Authority all such funds so pledged and assigned; and

WHEREAS, the Authority shall certify to the Commissioner annually a statement of the total amount necessary to be paid to the Authority by the County for the ensuing fiscal year (the “Authority Certificate”); and

WHEREAS, the Commissioner shall include in a certificate which the Commissioner files with the Comptroller the amount to be owed by the County to the Authority for the ensuing fiscal year (the “Commissioner’s Certificate”); and

WHEREAS, pursuant to Public Authorities Law §1680(2)(1)(2), the Comptroller shall pay to the Authority and deduct from any OCFS Funds to become due to the County an amount equal to the amount required to be paid by the County to the Authority as shown in the Commissioner's Certificate; and

WHEREAS, Exhibit "A", which is attached hereto and made a part hereof, sets forth, for the County, the date and amount of each payment required to be made by the County to the Authority during each fiscal year pursuant to Section 3.1 of the Financing Agreement; and

WHEREAS, the County's entry into a Financing Agreement has been approved by the Commissioner and the Division of the Budget of the State of New York.

NOW, THEREFORE, in consideration of the contemplated financing and of the mutual promises and agreements set forth below, the Parties agree as follows:

FIRST: The Authority shall provide the Authority's Certificate to the Commissioner not later than twenty days preceding the commencement of the ensuing fiscal year.

SECOND: The Commissioner shall provide the Commissioner's Certificate to the Comptroller not later than one day preceding the commencement of the ensuing fiscal year.

THIRD: The Authority shall, within five business days after payments are due from the County, send a written notice ("the Delinquency Notice") to the Director of State Expenditures of the Office of the State Comptroller (or such other person as the Comptroller shall hereafter designate in writing), with a copy thereof sent to the Commissioner and the Division of the Budget of the State of New York, setting forth: (i)

that the County has failed to timely pay any amounts due under the Financing Agreement; (ii) the amount of such delinquency; and (iii) the name and address of the Bond Trustee to whom such payment should be made and wire instructions for making such payment, and stating that the Delinquency Notice is being sent to the Comptroller for purposes of an intercept pursuant to Paragraph FOURTH of this Agreement.

FOURTH: (a) Upon receipt of a Delinquency Notice, the Comptroller shall deduct the amount set forth in the Delinquency Notice from any OCFS Funds that become due and available to the County and shall pay the same to the Bond Trustee. If the OCFS Funds that are available for payment are less than the amount set forth in the Delinquency Notice, the Comptroller shall pay the amount of such deficiency to the Bond Trustee at the time and to the extent OCFS Funds subsequently become due and available to the County until the amount set forth in such Delinquency Notice has been paid to the Bond Trustee. The amounts payable by the Comptroller to the Bond Trustee shall be payable by wire in accordance with the wire instructions provided in the Delinquency Notice not later than five business days after such moneys become available for payment. The Comptroller shall not pay any OCFS Funds to the County until all amounts due under any and all Delinquency Notices received by the Comptroller have been paid to the Bond Trustee.

(b) In event that: (i) the Authority has issued more than one Series of Bonds for the benefit of the County and has delivered one or more Delinquency Notices to the Commissioner in connection with the County; and (ii) the Comptroller determines that the OCFS Funds that would otherwise be due and available to the County are insufficient to pay in full the total amount set forth in all such Delinquency Notices; then, the Comptroller shall so notify the Authority at least one business day before the Comptroller expects to

pay such OCFS Funds and request instructions from the Authority with regard to the proportionate amount of such available funds to be paid to each Bond Trustee, and thereafter, in accordance with instructions provided by the Authority to the Commissioner and forwarded by the Commissioner to the Comptroller, the Comptroller shall pay such proportionate amounts.

FIFTH: This Agreement shall not be changed, modified or amended except by a writing executed by each of the Parties.

SIXTH: This Agreement may be executed in several counterparts, each of which shall be an original.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day
and year first written above.

**New York State Office of Children and Family
Services**

By: _____

Name:

Title:

Dormitory Authority of the State of New York

By: _____

Authorized Officer

Comptroller of the State of New York

By: _____

Name: Patricia Warrington

Title: Deputy Comptroller

County of Albany, New York

By: _____

Name:

Title:

Exhibit A

[Schedule “A” to the County’s Notice of Terms]